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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BEHLES-GIDDENS, P.A., now known as
J.D. BEHLES & ASSOCIATES, P.C.,
Petitioner,

v.

ANGEL PROJECT I, LTD., and
UNITED STATES TRUSTEE,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Under Sections 328 (a) and 330 (a) of the Bankruptcy Code, may a bankruptcy judge reconsider the reasonableness of a fee arrangement previously approved unless and until the judge determines that the terms and conditions of the agreement were improvident?

A. What impact does Section 328 (a) of the Bankruptcy Code have on previously approved fee agreements that are later reconsidered by a bankruptcy judge?

B. Should have the United States Court of Appeals for the Tenth Circuit and the courts below analyzed Behles-Giddens' fee applications consistent with the terms of both Section 328 (a) and Section 330 (a) of the Bankruptcy Code, and approved the requested fees consistent with the terms of the approved employment Order?

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The March 1, 2000, Order of the United States Court of Appeals for the Tenth Circuit denying the Petitioner's Petition for Rehearing En Banc is reprinted in Appendix L to this Petition. The January 18, 2000, Opinion of the United States Court of Appeals for the Tenth Circuit was unpublished, but is available at 2000 U.S. App. LEXIS 615, and is reprinted in Appendix A to this Petition. The August 11, 1997, Judgment, Memorandum Opinion, and Order of the United States Bankruptcy Court for the District of New Mexico is reprinted in Appendix D to this Petition. The October 3, 1996, Order of the United States District Court for the District of New Mexico is reprinted in Appendix B to this Petition. The September 10, 1996, Proposed Analysis and Recommended Disposition of the Magistrate Judge of the United States District Court for the District of New Mexico is reprinted in Appendix C to this Petition. The prior Orders of the United States Bankruptcy Court for the District of New Mexico concerning the Petitioner's Applications for Compensation are reprinted in Appendices E, F, G, H, I, J, and K to this Petition.

JURISDICTION

The Order and Judgment of the United States Court of Appeals for the Tenth Circuit were entered on January 18, 2000. The Order of the United States Court of Appeals for the Tenth Circuit denying the Petitioner's Petition for Rehearing En Banc was entered on March 1, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

STATUTES INVOLVED

This case involves the Bankruptcy Code, 11 U.S.C. § 328 (a), 11 U.S.C. § 330 (a) (1), 11 U.S.C. § 1102 (a) (2), 11 U.S.C. § 1103 (a), and 11 U.S.C. § 1103 (c) (1) - (5).

11 U.S.C. § 328 (a) provides:

> (a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

11 U.S.C. § 330 (a) (1) provides:

> (a) (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 –

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

11 U.S.C. § 1102 (a) (2) provides:

(a) (2) On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity holders. The United States trustee shall appoint any such committee.

11 U.S.C. § 1103 (a) provides:

(a) At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

11 U.S.C. § 1103 (c) (1) - (5) provides:

(c) A committee appointed under section 1102 of this title may –

(1) consult with the trustee or debtor in possession concerning the administration of the case;

(2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;

(4) request the appointment of a trustee or examiner under section 1104 of this title; and

(5) perform such other duties as are in the interest of those represented.

STATEMENT OF THE CASE

The Petitioner's appeal arises out of its representation of the Property Owner's Committee in the Angel Fire Bankruptcies, In Re: Angel Fire Corporation, No. 11-93-12176, and the fees for which the Petitioner applied. In 1993, the Angel Fire Corporation (hereinafter referred to as the "Debtor") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Mexico. The U.S. Trustee, pursuant to 11 U.S.C. § 1102 (a) (2), appointed a Property Owner's Committee ("POC"), which hired the Petitioner, Behles-Giddens, P.A. ("Behles-Giddens"), pursuant to 11 U.S.C. §§ 1103 (a) and 328 (a), on an hourly time and charges basis for legal services pertaining to the POC's claims against the bankruptcy estate.

All of the services performed by Behles-Giddens were done at the POC's request and were authorized by the language in 11 U.S.C. § 1103 (c). These services included (1) consulting with the U.S. Trustee and Debtor in Possession concerning case administration; (2) investigating the acts, conduct, assets, liabilities, and financial condition of the Debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan; (3) participating in the formation of a plan, advising property owners represented by the POC of the POC's determinations as to any such plan, and collecting and filing the POC's acceptances or rejections of proposed plans; (4) requesting the appointment of a trustee or examiner; and (5) performing such other services as were in the POC's interest. The court below later denied certain fees and costs, on the basis that the interests of certain members of the POC were not compensable as creditor claims performed on behalf of POC constituency, and were, thus, not subject to

compensation under Section 330 as "reasonable and necessary."

Procedurally, this case has been a long journey for the Petitioner. After a hearing on Behles-Giddens' second, third, and fourth Applications for Compensation, the Honorable Stewart Rose, United States Bankruptcy Judge for the District of New Mexico, awarded Behles-Giddens a total sum of $535,507.05 in attorney's fees, completely denying a substantial portion of the fees and costs earned under the Section 328 (a) fee agreement Order in the amount of $692,400.00. Behles-Giddens appealed the Order to the United States District Court for the District of New Mexico. The Honorable Richard L. Puglisi, United States Magistrate Judge, concluded that Judge Rose's factual findings were inadequate and that the legal basis used in his Order was indeterminable. Judge Puglisi ordered that the matter be remanded.

Upon remand to the United States Bankruptcy Court, the Honorable Roland J. Brumbaugh, United States Bankruptcy Judge, acting as successor to Judge Rose, reviewed a transcript of the earlier hearing, awarded Behles-Giddens the sum of $535,507.05, and prohibited Behles-Giddens from submitting any further applications for compensation.

Behles-Giddens appealed the matter to the United States District Court for the District of New Mexico, where the matter was assigned to the Honorable John Conway, United States Judge for the District of New Mexico, who referred the matter to Magistrate Judge Puglisi. Judge Puglisi recommended that Judge Brumbaugh's Memorandum opinion and Order be affirmed and Judge Conway adopted that recommendation.

Behles-Giddens appealed the matter to the United States Court of Appeals for the Tenth Circuit. In finding that Behles-Giddens raised no issue that warranted relief, the Tenth Circuit stated only that the amount awarded was "reasonable" under 11 U.S.C. § 330 (a) (1) (A). The Court failed to analyze Behles-Giddens' fee applications under both Sections 328 (a) and 330 (a) as is required by the very terms of Section 330 (a).

Under Section 328 (a), a committee, with the court's approval, may employ professional persons on any reasonable terms of employment, including hourly, and notwithstanding such approval, the court may allow compensation different from that provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been "improvident in light of developments not capable of being anticipated at the time of fixing such terms and conditions." Under Section 330 (a) (1), a bankruptcy court, subject to Section 328, may award an attorney employed under Section 1103 reasonable compensation for actual, necessary services rendered by the attorney. Under Section 328 (a), only after a showing that the terms and conditions of the agreement proved to be improvident in light of unforeseen developments may the court modify the terms and conditions of the compensation. In this matter, there were no unforeseen developments that made the terms and conditions of Behles-Giddens employment Order improvident.

REASONS FOR GRANTING THE WRIT

I. THE COURTS ARE DIVIDED ON THE QUESTION

Congress enacted the Bankruptcy Code in 1978, restructuring bankruptcy law and creating a uniform federal statutory structure for debtor relief. To make the compensation of bankruptcy attorneys commensurate with the fees awarded for comparable services in non-bankruptcy cases and to "not deter competent counsel from entering the bankruptcy area," Congress enacted Sections 328 and 330. Section 328 (a) provides the procedural mechanism by which Bankruptcy Courts authorize the terms of compensation at the time of the application for approval for employment, and it authorizes bankruptcy courts to pre-approve a wide variety of employment arrangements, including on retainer, on an hourly basis, or on a contingent fee basis. In a similar vein, Section 330 (a) provides the framework for review of a fee arrangement and states that compensation should be "reasonable." By its own terms, however, Section 330 (a) is "subject to" the limitations set forth in Section 328 (a), and the two sections work in tandem and must be read together. Thus, when the court has pre-approved the terms and conditions of employment under Section 328 (a), the reasonableness factors of Section 330 (a) cannot supplant Section 328 (a), and a judge cannot freely void a previously authorized fee arrangement unless the terms and conditions of the agreement "prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions."

Under this framework, the question presented by this case is a question of federal law involving Sections 328 (a) and 330 (a) of the Bankruptcy Code. Although there is a

paucity of case law in the federal courts specifically addressing this question, the United States Courts of Appeals and Bankruptcy Courts that have considered the issue have rendered decisions that deviate from the customary approach in federal courts that uses a Section 330 (a) lodestar and "reasonableness" analysis. *See, e.g., Boston & Maine Corp. v. Moore*, 776 F.2d 2, 6-7 (1st Cir. 1985).

To date, only two Circuit Courts of Appeals have directly considered in a published opinion how Sections 328 (a) and 330 (a) are to be applied in tandem to a fee arrangement that was previously approved by a bankruptcy court. The United States Courts of Appeals for the Fifth and the Ninth Circuits have held that when prior court approval is given to a certain fee agreement under Section 328 (a), a judge may not later modify the agreement under a Section 330 (a) reasonableness analysis unless the agreement proves to have been improvident in light of unforeseeable developments. *In Re: Reimers*, 972 F.2d 1127, 1129 (9th Cir. 1992); *Donaldson, Lufkin & Jenrette Sec. Corp. v. Nat'l Gypsum (In Re: National Gypsum Co.)*, 123 F.3d 861, 862 (5th Cir. 1997). In contrast, The United States Court of Appeals for the First Circuit adheres to the lodestar approach under Section 330 (a), irregardless of Section 328 (a), when reviewing applications for compensation. *Boston & Maine Corp. v. Moore*, 776 F.2d at 6-7.

To date, the United States Court of Appeals for the Tenth Circuit has not published an opinion that specifically addresses the proper analysis for an award of attorneys fees under Sections 328 (a) and 330 (a). However, in its unpublished Opinion below, the Tenth Circuit used exclusively a Section 330 (a) "reasonable, actual, and necessary" analysis, ignoring the facts that Behles-Giddens' fee arrangement with the POC was previously approved by

the Bankruptcy Court pursuant to Section 328 (a) and that no unanticipated events occurred that rendered improvident the terms and conditions of the agreement.

United States Bankruptcy Courts have similarly rendered differing opinions on the question of the impact of Section 328 (a) on pre-approved fee arrangements, with a minority of those Courts holding that Section 328 (a) requires the court to make a determination as to the reasonableness of a fee arrangement at the beginning of a case, not later under Section 330 (a). *In re Dividend Devel. Corp.*, 145 B.R. 651 (Bankr. C.D. Cal. 1992). Similarly, another court held that where a law firm sought and got court approval of a contingency fee agreement under Section 328 (a), Section 328 (a) was the applicable standard for reviewing pre-approved fee arrangements, not Section 330 (a). *In re Merry Go-Round Enter.*, 244 B.R. 327, 336 (Bankr. M.D. Md. 2000).

II. THE QUESTION PRESENTED IS AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE RESOLVED BY THIS COURT

The issue raised by this case is one that requires resolution by this Court for several reasons.

A. The Need for Uniformity in Application of the Bankruptcy Code

First, the opinions in the Fifth and Ninth Circuit Courts of Appeals leave unsettled the proper, uniform basis by which all Bankruptcy courts are to determine and award attorneys fees under Sections 328 (a) and 330 (a) of the Bankruptcy Code. This is an important question that should be resolved by this Court due to the need to ensure that competent counsel work in the area of bankruptcy law (124 CONG. REC. H11, 091-92 (daily ed. Sept. 28, 1978) *reprinted in* 1978 U.S.C.C.A.N. 6436, 6442) and due to the need for uniform application of the provisions of the Bankruptcy Code by the Federal Courts. *McKenzie v. Irving Trust Co.*, 323 U.S. 365, 369-70 (1945).

B. The Need for Resolution on how Bankruptcy Courts are to Uniformly Determine Attorney's Fees Under Sections 328 and 330

Second, the decision in the Tenth Circuit below, though unpublished, represents a conflict among the Circuit Courts of Appeals on how Sections 328 (a) and 330 (a) are to be appropriately applied in the awarding of attorney's fees.

The Fifth and Ninth Circuit Courts of Appeals have rendered opinions that give credence to the approach under Sections 328 (a) and 330 (a). Yet, in its Order and Judgment of January 18, 2000, the Tenth Circuit Court of Appeals summarily disposed of Behles-Giddens' request for review under Sections 328 (a) and 330 (a) without even a look at Section 328 (a).

This lack of uniform application across the Circuits exemplifies the confusion among the Bankruptcy Courts and practitioners regarding the tandem use of Sections 328 (a) and 330 (a), particularly at the time of the attorney's application for compensation. If attorneys are not assured of the certainty of their fee arrangements as Congress so intended, no competent counsel will undertake the estate work for fear that their previously-approved fee agreement will be later modified on the whim of the judge. Behles-Giddens respectfully requests this Court to make a determination on the tandem use of Sections 328 (a) and 330 (a) and to diminish the uncertainty that bankruptcy practitioners may otherwise face if Bankruptcy Courts continue to ignore the impact of Section 328 (a) on approved fee agreements.

C. Scholarly Commentary on the Matter Supports the View that Sections 328 (a) and 330 (a) are to be Used in Tandem in the Review and Awarding of Fees.

Third, legal commentary on the matter supports Behles-Giddens' position that an analysis under Sections 328 (a) and 330 (a) serves as the proper basis to review and award fees. What little there has been written on the subject points out the common misapprehension shared by bankruptcy

judges and practitioners that a court has the right, and even the duty, to re-examine the reasonableness of fees at the final fee hearing. *See* Leif M. Clark, *Survey Article: Bankruptcy*, 30 TEX. TECH L. REV. 441, 468 (1999) Another commentator has suggested that "many lawyers and judges do not understand, or even realize, the impact of Section 328 (a). . . . [t]here is great confusion regarding the impact of Section 328 (a), particularly at the time of the application for compensation." Landry & Higdon, *A Primer on 11 U.S.C. 328(a) and its use in Alternative Billing Methods in Bankruptcy*, 50 MERCER L. REV. 537, 539 (1999). One of the more noted commentators on Bankruptcy Law has noted that, although a court continues to retain the ultimate responsibility in ensuring that compensation falls within the parameters of Section 330, "[T]his does not mean that a court may conduct a reasonableness review of an approved fee arrangement." 2 LAWRENCE P. KING, COLLIER ON BANKRUPTCY, P 328.03[1] (15th ed. 1996) (citing *In re Dividend Development Corp.*, *supra*). In light the confusion in the Federal Circuits regarding the uniform applications of Sections 328 (a) and 330 (a), Behles-Giddens respectfully asks this Court to clarify how the two statutes are to be construed.

CONCLUSION

This case presents a question of importance to bankruptcy practitioners -- whether bankruptcy judges can reconsider the reasonableness of fee agreements that were already approved by the court pursuant to Section 328 (a) of the Bankruptcy Code. If the opinions below are allowed to stand, bankruptcy practitioners in the Federal Circuits where the tandem use of Sections 328 (a) and 330 (a) is not recognized will continue to work with the uncertainty that their approved fee agreements may be later modified on a judge's whim. The very terms of Section 330 (a) subject the

statute to the limitations set forth in Section 328. The Petitioner respectfully asks this Court to question how the courts below can interpret the Sections 328 (a) and 330 (a) any other way. In doing so, this Court can affirm the importance of uniformity in application of the Bankruptcy Code.

Accordingly, Behles-Giddens respectfully requests that this Petition for Writ of Certiorari be granted.

/s/_____

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APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

[Filed January 18, 2000]

No. 98-2198

BEHLES-GIDDENS, P.A., now known as J.D. BEHLES AND ASSOCIATES, P.C., *Appellant,*	)
v.	)
ANGEL PROJECT I, LTD., and UNITED STATES TRUSTEE, *Appellees.*	)

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel. Citation of orders and judgment is generally disfavored; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **BRORBY** and **McWILLIAMS**, Circuit Judges, and **WEST**, District Judge[1]

Appellant Behles-Giddens, P.A. (Behles-Giddens), was employed pursuant to title 11, section 1103 of the United States Code as legal counsel for a property owners' committee appointed in a bankruptcy proceeding involving Angel Fire Corporation.[2] In re Angel Fire Corporation, No. 11-93-12176. As such, Behles-Giddens was required to have its fees and expenses approved by the bankruptcy court. 11 U.S.C. §§ 330(a)(1), 1103.

In an Order dated September 18, 1995, the Honorable Stewart Rose, United States Bankruptcy Judge for the District of New Mexico, after a hearing on Behles-Giddens' second, third and fourth Applications for Compensation, awarded Behles-Giddens the total sum of $535,507.05 in attorneys' fees. The Order was appealed to the district court and the matter was assigned to the Honorable Santiago E. Campos, United States District Court for the District of New Mexico, who referred it to United States Magistrate Judge Richard L. Puglisi.

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[1] The Honorable Lee R. West, Senior United States District Judge for the Western District of Oklahoma, sitting by designation.

[2] Although this bankruptcy proceeding was consolidated for administrative purposes with proceedings involving four wholly-owned subsidiaries, the property owners' committee was appointed only in the Angel Fire Corporation matter.

Magistrate Judge Puglisi deemed Judge Rose's factual findings inadequate and the legal basis used indeterminable and he recommended that the matter be remanded. Judge Campos adopted the recommended disposition and the matter was remanded to the bankruptcy court on October 3, 1996.

The case was eventually transferred to the Honorable Roland J. Brumbaugh, United States Bankruptcy Judge for the District of New Mexico, in June 1997. On August 11, 1997, Judge Brumbaugh, after reviewing a transcript of the earlier hearing, again awarded fees to Behles-Giddens in the amount of $535,507.05. He also prohibited Behles-Giddens from submitting any further applications for compensation. Behles-Giddens again appealed to the district court. The matter was assigned to the Honorable John Conway, United States District Judge for the District of New Mexico, who in turn referred the matter to Magistrate Judge Puglisi.

On June 22, 1998, Magistrate Judge Puglisi recommended that Judge Brumbaugh's Memorandum Opinion and Order be affirmed and on July 15, 1998, Judge Conway adopted that recommendation. This appeal followed.

Behles-Giddens has raised numerous issues on appeal. Having reviewed the factual findings made by Judge Brumbaugh under a "clearly erroneous" standard and having considered de novo the questions of law, e.g., Virginia Beach Federal Savings and Loan Ass'n v. Wood, 901 F.2d 849 (10th Cir. 1990), we find Behles-Giddens has raised no issue that warrants the relief requested.

Title 11, section 330 of the United States Code authorizes a bankruptcy court to award "reasonable

compensation for actual, necessary services. . . ." 11 U.S.C. § 330(a)(1)(A). "An element of whether the services were 'necessary' is whether they benefitted the bankruptcy estate." In re Lederman Enterprises, Inc., 997 F.2d 1321, 1323 (10th Cir. 1993) (citation omitted). A determination of whether the claimed services were actual and/or necessary is dispositive of the issues presented in this case.

Based upon our review of the record, we find the award of $535,507.05 is reasonable compensation for the actual and necessary services rendered by Behles-Giddens. Accordingly, we AFFIRM for substantially the same reasons set forth in Judge Brumbaugh's Memorandum Opinion and Order dated August 11, 1997, and Magistrate Judge Puglisi's Proposed Analysis and Recommended Disposition dated June 22, 1998, which were adopted and affirmed by Judge Conway on July 15, 1998.

Entered for the Court

/s/_____
Lee R. West
Senior District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed October 3, 1996]

No. CIV 95-1154 SC/RLP

BEHLES-GIDDENS, P.A., and THE PROPERTY OWNERS COMMITTEE,
Appellants,

v.

ANGEL FIRE CORPORATION, ANGEL FIRE SKI CORPORATION, SANGRE DE CRISTO LIMITED PARTNERSHIP I, SANGRE DE CRISTO LIMITED PARTNERSHIP II, SANGRE DE CRISTO LIMITED PARTNERSHIP IV, PARKER TOWN SQUARE, INC., ANGEL PROJECT I, LTD., BILL J. SHOLER, TRUSTEE, UNITED STATES TRUSTEE, and TICOR TITLE INSURANCE COMPANY,
Appellees.

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDED DISPOSITION AND REVERSING THE DECISION OF THE BANKRUPTCY COURT

THIS MATTER came before the Court on the Magistrate Judge's Findings and Recommended Disposition, filed September 10, 1996, and on the limited objections to the proposed findings and recommended disposition filed by Appellees United States Trustee for the District of New Mexico and Angel Projects I, Ltd. The Court conducted a *de novo* review of those portions of the Magistrate Judge's findings and recommended disposition to which Appellees object.

IT IS HEREBY ORDERED that the findings and recommended disposition of the United States Magistrate Judge are adopted by the Court.

IT IS FURTHER ORDERED that the judgment of the Bankruptcy Court be, and hereby is, reversed, and this matter is remanded for further proceedings consistent with this Order.

/s/_____
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed September 10, 1996]

No. CIV 95-1154 SC/RLP

BEHLES-GIDDENS, P.A., and THE PROPERTY OWNERS COMMITTEE,
Appellants,

v.

ANGEL FIRE CORPORATION, ANGEL FIRE SKI CORPORATION, SANGRE DE CRISTO LIMITED PARTNERSHIP I, SANGRE DE CRISTO LIMITED PARTNERSHIP II, SANGRE DE CRISTO LIMITED PARTNERSHIP IV, PARKER TOWN SQUARE, INC., ANGEL PROJECT I, LTD., BILL J. SHOLER, TRUSTEE, UNITED STATES TRUSTEE, and TICOR TITLE INSURANCE COMPANY,
Appellees.

MAGISTRATE JUDGE'S PROPOSED ANALYSIS AND RECOMMENDED DISPOSITION

Proposed Findings

THIS MATTER is before the Court on appeal from the decision of the Bankruptcy Court denying the second, third, and fourth fee applications submitted by Behles-Giddens, P.A. Following a three-day evidentiary hearing, on July 31, 1995, the Bankruptcy Court ruled from the bench, approving $535,507.05 of the total amount requested. Behles-Giddens appeals from the Bankruptcy Court's Order of September 18, 1995, memorializing its oral ruling.

This dispute arises from the voluntary Chapter 11 bankruptcy proceedings initiated by Angel Fire Corporation (AFC), Angel Fire Ski Corporation (AFSC), Sangre de Cristo Limited Partnership I (Sangre I), Sangre de Cristo Limited Partnership II (Sangre II), and Sangre de Cristo Limited Partnership IV (Sangre IV) on July 9, 1993. AFC was a holding company, which along with its wholly-owned subsidiaries, AFSC, Sangre I, and Sangre II, operated the Angel Fire resort in northern New Mexico. Sangre IV, another wholly-owned subsidiary of AFC, owned and operated a hotel at the base of the Angel Fire ski area. The bankruptcy proceedings were consolidated for joint administration on October 27, 1993.

On September 21, 1993, the United States Trustee appointed a committee of property owners (POC) in the AFC proceeding, pursuant to 11 U.S.C. § 1102(a). This committee represented approximately 5,800 to 6,000 Angel Fire property owners. The POC pursued four main goals on behalf of the

property, owners: 1) to assure funding for future improvement to and operation of the water and sewer system for those who purchased property through escrow contracts; 2) to preserve their negative easement right to use resort amenities, including the ski area, golf course, and country club; 3) to insure their annual dues payments of approximately $1,500,000 were used in a manner consistent with their amenity rights; and 4) to protect claims of some 750 owners against HUD for infrastructure improvements.

The Bankruptcy Court approved the employment of Behles-Giddens as counsel for the POC on September 30, 1993. In its Order, the court also authorized the estate to pay Behles-Giddens 75% of billed attorneys' fees and 100% of billed costs on a monthly basis, with fee applications to be filed not less than every 180 days. Behles-Giddens filed its first application for compensation for the period from September 21, 1993, through January 31, 1994, on February 25, 1994, seeking attorneys' fees of $129,104.90, paraprofessional fees of $19,680.00, taxes of $8,648.87, and costs of $24,349.01, $81,825.28 of which had been paid previously. Following objections by five of the parties, Judge McFeeley held four hearings on the first application between April and September 1994 and entered four orders, ultimately approving all but $2,912.09 of the amount requested.

Behles-Giddens filed its second fee application on August 24, 1994, seeking attorneys' fees of $282,919.75, paraprofessional fees of $45,739.00, taxes of $19,018.44, and costs of $48,601.53, of which $280,386.68 had previously been paid. Numerous objections again were filed, including that of First National Bank of Santa Fe (FNBSF), which also requested that Behles-Giddens disgorge all fees previously

paid. On October 19, 1994, FNBSF filed a motion to amend the order of employment of Behles-Giddens and another request for an order of disgorgement of all fees previously paid. The Bankruptcy Court conducted a full evidentiary hearing on FNBSF's motion on December 13, 1994, and issued its order denying the motion to amend the order of employment and the request for an order of disgorgement on January 3, 1995.

At the hearing on the second fee application on January 25, 1995, Judge McFeeley directed Behles-Giddens to file its third fee application and continued the hearing until April 5, 1995, at which time a combined preliminary hearing was to be held on both the second and third applications. On February 16, 1995, however, Judge McFeeley recused himself from these bankruptcy proceedings and they were transferred to Judge Rose. Judge Rose subsequently deferred hearings on all fee applications until after holding the hearing on plan confirmation.

Behles-Giddens filed its third application for compensation on February 21, 1995, requesting attorneys' fees of $301,850.04, paraprofessional fees of $25,558.50, taxes of $19,030.03, and costs of $51,157.23, $282,976.63 of which had already been paid. Sometime in the spring of 1995 the Chapter 11 trustee apparently ceased making monthly payments to Behles-Giddens. Behles-Giddens filed its fourth and final fee application on June 21, 1995, seeking further attorneys' fees of $181,991.40, paraprofessional fees of $19,450.00, taxes totaling $11,708.71, and costs of $37,835.60, apparently none of which had been prepaid.

The Bankruptcy Court held the hearing on all fee applications from July 25 through July 31, 1995, at which time it considered Behles-Giddens' second, third, and fourth applications and the argument of the five objectors, AFC, Angel Project I, Ltd., Parker Town Square, Ticor Title Insurance Company and FNBSF, Trustee Bill J. Sholer, and the United States Trustee. Following its ruling from the bench on July 31, 1995, the Bankruptcy Court issued an order on September 18, 1995, awarding total, undifferentiated compensation of $535,507.05 to Behles-Giddens for the three applications and disallowing all other amounts requested. It is this order from which Appellants now appeal.

On appeal the District Court will reject the Bankruptcy Court's findings of fact only if clearly erroneous. *Broitman v. Kirkland (In re Kirkland),* 86 F.3d 172, 174 (10th Cir. 1996) (citing *In re Mama D'Angelo, Inc.,* 55 F.3d 552, 555 (10th Cir. 1995)); Fed. R. Bankr. P. 8013 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses."). This Court will review conclusions of law, however, *de novo. Kirkland,* 86 F.3d at 174 (citing *In re Davidovich,* 901 F.2d 1533, 1536 (10th Cir. 1990)).

Among other issues on appeal, Appellants contend that the Bankruptcy Court's findings of fact are inadequate to allow this Court to review its decision. After having thoroughly reviewed the briefs of the parties and the transcript of the Bankruptcy Court's oral decision and having heard oral argument on September 3, 1996, the Court agrees. This Court additionally finds that it also is unable to determine the

legal basis employed by the Bankruptcy Court in reaching its decision. Therefore, this matter should be reversed and remanded to the Bankruptcy Court for entry of findings of fact and conclusions of law sufficient to allow meaningful review on appeal, if necessary. Given that the Bankruptcy Court has already entertained three days of testimony concerning this matter, no further proceedings would appear to be necessary. The parties to this appeal so agreed at oral argument.

This Court is mindful of its limited role in reviewing the Bankruptcy Court's award of attorneys' fees. *See e.g., Mares v. Credit Bureau of Raton,* 801 F.2d 1197, 1199-1200 (10th Cir. 1986), and cases cited therein. Recognizing that the Bankruptcy Court has discretion in awarding attorneys' fees, *Rubner & Kutner, P.C. v. U.S. Trustee (In re Lederman Enters.),* 997 F.2d 1321, 1323 (10th Cir. 1993), it should, however, "provide a concise but clear explanation of its reasons for the fee award," which gives an adequate basis for review, *Mares,* 801 F.2d at 1201 *(quoting Hensley v. Eckerhart,* 461 U.S. 424, 437 (1983)). Thus, the Bankruptcy Court, applying the standards set forth in Section 330 of the Bankruptcy Code, 11 U.S.C. § 330, and the lodestar analysis set forth in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714 (5th Cir. 1974), *First Nat't Bank of Lea County v. Niccum (In re Permian Anchor Servs.),* 649 F.2d 763, 768 (10th Cir. 1981), should issue an order setting forth its decision and the reasoning therefore with regard to its award of attorneys' fees in this matter. *Lederman,* 997 F.2d at 1323.

Recommended Disposition

That the Bankruptcy Court's Order be reversed and this matter be remanded. The Parties shall be given the opportunity to object as described in 28 U.S.C. § 636. Objections shall be filed within ten days of the date of entry of the Magistrate Judge's Proposed Findings and Recommended Disposition.

/s/_____
Richard L. Puglisi
UNITED STATES MAGISTRATE JUDGE

APPENDIX D

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW MEXICO

[Filed August 11, 1997]

No. 11-93-12176 RA

In re:	)
	)
ANGEL FIRE CORPORATION,	)
ANGEL FIRE SKI	)
CORPORATION, SANGRE	)
DE CRISTO LIMITED	)
PARTNERSHIP I, SANGRE	)
DE CRISTO LIMITED	)
PARTNERSHIP II, SANGRE	)
DE CRISTO LIMITED	)
PARTNERSHIP IV,	)
Debtors,	)
	)

JUDGMENT

Pursuant to and in accordance with the Order signed by the Honorable Roland J. Brumbaugh, United States Bankruptcy Judge, on August 11, 1997, it is

ORDERED that the Second, Third, and Fourth Applications for Compensation (Doc. # 637, 981, and 1311) by Behles-Giddens, P.A., are finally approved, and the

Applications are allowed in the amount of $535,507.05. It is

FURTHER ORDERED that any sums received by Behles-Giddens, P.A., from the estate in excess of the total amount allowed by this Order and upon the First Application shall be returned to the estate forthwith. It is

FURTHER ORDERED that no further applications for compensation from Behles-Giddens, P.A., as counsel for the Property Owners Committee, herein shall be considered by the Court.

Dated August 11, 1997

/s/_____
Jill Peterson, Deputy Clerk
United States Bankruptcy Court
421 Gold Avenue SW
Albuquerque, NM 87102

APPROVED AS TO FORM:

/s/_____
Roland J. Brumbaugh
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed August 11, 1997]

No. 11-93-12176 RA

In re:	)
	)
ANGEL FIRE CORPORATION,	)
ANGEL FIRE SKI	)
CORPORATION, SANGRE	)
DE CRISTO LIMITED	)
PARTNERSHIP I, SANGRE	)
DE CRISTO LIMITED	)
PARTNERSHIP II, SANGRE	)
DE CRISTO LIMITED	)
PARTNERSHIP IV,	)
Debtors,	)
	)

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for hearing beginning July 26, 27, and 28, 1995, before the Honorable Stewart Rose. Closing arguments were heard on July 31, 1995. On September 18, 1995, Judge Rose entered his Order Regarding Second, Third, and Fourth Application for Compensation Filed by Counsel for the Property Owners Committee. That Order was appealed to the U.S. District Court for the District of New Mexico. In the fall of 1996 the matter was remanded to this Court for the entry of detailed findings and conclusions.

In March 1997 Judge Rose was injured in an accident and was not available. Thereafter, on June 12, 1996, Judge McFeeley of this Court transferred this case to the undersigned pursuant to Rule 63, Fed. R. Civ. P., and Rule 9028, Fed. R. Bankr. P. Subsequently the undesigned reviewed the case, including the transcript of the testimony and arguments for the July 1995 hearing and set a hearing upon notice to determine if any party deemed it necessary to recall any witness in the matter. That hearing was held July 28, 1997, and no parry desired to recall any witness. Therefore, the matter is ripe for decision.

The matters now before the Court are the 2nd, 3rd, and 4th, provisional and final applications for fees and expenses of counsel appointed for the Property Owners Committee ("POC"), Behles-Giddens, P.A. ("BG"). These applications cover the period from January 28, 1994, to June 21, 1995. The POC was appointed in the Angel Fire Corporation ("AFC") case, and not in any of the other cases now consolidated herein.

Angel Fire Resort is a real estate development that consists of several thousand subdivided residential lots. There is also a ski area, hotel, golf course and club house, recreational lakes, greenbelt areas, and a petting zoo. The rights to use these facilities by the owners of the lots who pay dues are referred to by the parties as the "amenities." Over 6000 of the lots have been sold and a major portion of those now have houses or cabins built on them. The dues paid by the lot owners amount to approximately $1.5 million per year. All of the undeveloped property and amenities were owned by AFC, except the hotel and ski area. The hotel was owned by a limited partnership and was worth no more than $2.0

million, but it was secured to Parker Town Square, a subsidiary of a Savings and Loan Association, for a debt of over $22.0 million. Although AFC was liable on the Parker debt, Parker held no security for the debt except the hotel. The ski area was owned by Angel Fire Ski Corporation ("AFSC"), which was a wholly owned subsidiary of AFC. The ski area was pledged to TICOR for a $2.2 million debt. The golf course club house was pledged to Francine Equities for a $0.6 million debt. These debts, along with some delinquent property taxes, were the major secured debts. There was no significant unsecured debt except for the claims of the owners of the lots.

These lot owners, or "property owners" professed two interests or claims: (1) to preserve their right to use the amenities (referred to by the parties as a "negative easement") and as a parallel thereto, to insure that the dues they paid were used in accordance with prior agreements, i.e., to preserve and maintain those amenities; and (2) the completion of the infrastructure improvements in the development such as water, sewer, roads, etc. Because the developers had not yet completed all of the infrastructure as required by the Interstate Land Sales Act, sales of the lots had ceased in the mid 1980s. These were referred to as the "HUD claims."

The property owners prevailed upon the U.S. Trustee to appoint the POC, but the record is devoid of any indication that the U.S. Trustee had any real discussion with the property owners selected regarding the nature of their claims as creditors, as distinguished from those of community residents or of amenities users.

After the POC was formed by the U.S. Trustee the POC interviewed several law firms and ultimately selected BG as it counsel. Minutes of the POC meetings of the interviews with BG reflect that no discussion of the nature of the claims of the members of POC against AFC was ever had. Testimony at the hearing indicated that no fee agreement between the POC and BG was ever discussed, and that the POC never believed that it had any obligation to pay the fees of BG.

Although BG divided its fee applications into 26 sub-categories of work performed, for purposes of the decision herein the Court will analyze the attorney fee applications in 5 main categories: (1) HUD claims; (2) dues structure and escrow funds; (3) plan participation; (4) dues supervision; and (5) litigation. In addition, the Court will consider the paraprofessional fees and expenses separately.

This analysis begins in looking at the original appointment of the committee. Appointment and appropriate composition of a committee are the obligations of the U.S. Trustee. 11 U.S.C. § 1102(a); *see, In re Drexel Burnham Lambert Group, Inc.*, 118 B.R. 209 (Bankr. S.D.N.Y. 1990). Because only unsecured creditors may serve on the committee, the U.S. Trustee must analyze the nature of the committee members' claims. *In re America West Airlines,* 142 B.P. 901 (Bankr. Ariz. 1992). As the court stated in *In re Grant Broadcasting of Philadelphia, Inc.*, 71 B.P. 655 at 661-62 (Bankr. E.D. Pa. 1987), ". . . it is important to make certain that they [committee members] are representative of *common* creditors' concerns." [Italics in original]. There is no evidence in the record that the U.S. Trustee informed the

POC members of any limitations on their activities as creditors of AFC.

Professional fees can be approved only for actual and necessary services and expenses and the fees must be reasonable. 11 U.S.C. § 330(a)(1); *In re Lederman Enterprises, Inc.*, 997 F.2d 1321. And the court can order the return of any interim fees received in excess of the final award. 11 U.S.C. § 330(a)(5).

Two of the three statutory requirements are at issue here. The first issue is whether the services and expenses are "actual," i.e., services were in fact performed and expenses incurred. *In re Orthopaedic Technology, Inc.*, 97 B.R. 596 (Bankr. Colo. 1989). The second issue is whether the services and expenses were "necessary." BG argues that "necessary" means the POC's objectives could not have been met but for the services performed, citing *In re Pettibone Corp.*, 74 B.R. 293 (Bankr. N.D. Ill. 1987), and *In re Lifschultz Fast Freight, Inc.*, 140 B.R. 482 (Bankr. N.D. Ill. 1992). The objectors cite *Lederman, supra*, 997 F.2d 1321, and *In re Stromberg*, 161 B.R. 510 (Bankr. Colo. 1993), asserting that a threshold inquiry is whether the services benefitted the estate, and that compensation from the estate is precluded if no benefit is shown.

Applicable case law indicates that the meaning of "necessary" in this context is a composite of the two positions. Even in the cases cited by BG, the "but for" analysis is circumscribed by the committee's capacity as creditors. The objectors' asserted "benefit" threshold, on the other hand, may be met simply by the committee's performance of allowable duties under 11 U.S.C. § 1103(c).

Fees for services of committee counsel, therefore, are compensable from the estate if the services convey a direct benefit to the estate or are necessary to the undertaking of a committee's allowable duties. In other words, "necessary" services benefit the estate by implication, *see Lederman, supra,* 997 F.2d at 1323 ("benefit" is an element of the "necessary" requirement) (citing *In re Dixon,* 143 B.R. 671 (Bankr. N.D. Tex. 1992) ("main inquiry under § 330 is whether . . . services were necessary and benefitted the estate")) [emphasis added], and no separate benefit must be shown if services are in pursuit of statutorily specified duties.

BG's view of "necessary" leads to the ". . . prominence to fee matters which causes some bankruptcy courts to be held in low esteem by many creditors, who perceive our Courts as servants of the interest of the bankruptcy bar rather than the interests of debtor and creditors." *In re Grant Broadcasting, supra,* 71 B.R. at 660. The actual meaning of "necessary" in this context inheres in the cross-check on professional fees found in the provisions of 11 U.S.C. §§ 101(5) and 1102(a)(1), which limit membership of a creditors committee to parties holding claims for payment. By this limitation, the ultimate dividend to unsecured creditors will necessarily be reduced by the fees paid to their counsel, and the committee and counsel must operate within the confines of this inverse ratio. *In re Gillett Holding, Inc.,* 137 B.R. 462 (Bankr. Colo. 1992). However, vociferousness of committee members and unflinching willingness of counsel to oblige are not grounds for awarding fees. *In re Pettibone, supra,* 74 B.R. 308; *In re Lederman, supra,* 997 F.2d 1321. Counsel are obligated to make judgments about the relevance of the work the principal calls

upon it to perform. *In re Kitchen Factors, Inc.*, 143 B.R. 560 (9th Cir. BAP 1992).

BG further argues that this committee was appointed as a property owners committee, even asserting in its opening statement that the owners were not creditors (Tr. at 22), as if to suggest the amended order approving its employment condones this hybrid composition of the committee. The apparent thrust of this argument is that, to the extent the conduct of the POC and counsel was not representative of creditors, such conduct was nonetheless pre-approved by the amended order of appointment, or that some sort of estoppel allows fees for all services on behalf of the committee, whether made up of creditors or not. The Court is obviously not-concerned with the name of the committee. *See In re Dow Corning Corp.*, 194 B.R. 121 (Bankr. E.D. Mich. 1996) ("Tort Claimants committee"). The amended order approving employment gives no indication that the committee, as an official committee under 11 U.S.C. § 1102, was authorized to act in a capacity other than as creditors. Nor is there any authority furnished for the proposition that an appointment order can override or displace statutory requirements. *See In re Dow Corning Corp.*, 199 B.R. 896 (Bankr. E.D. Mich. 1996) (Services must be "*within the bankruptcy case*") [italics in original].

Although argument and testimony at trial generally cast the dispute in terms of the requirement that fees must be reasonable, the objections are not actually directed at this element. Reasonableness is determined by formula after the Court has found the services and expenses are actual and necessary. *In re Lederman, supra,* 997 F.2d 1323. The measure of reasonableness is set forth in 11 U.S.C.

§ 330(a)(3) and in the twelve-factor "lodestar" calculation announced in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). The objectors do not contend that the amount of time spent by BG on necessary services, or the firm's hourly rates, were unreasonable in the circumstances. As discussed below, the objections are resolved by determining whether services and expenses were actual and necessary, not whether the fees charged were reasonable.

The applicant has the burden of proof in obtaining approval of its fees. *Mares v. Credit Bureau of Raton,* 801 F.2d 1197 (10th Cir. 1986); *In re Pettibone, supra,* 74 B.R. 293. If this burden is not met, the Court may deny the application in whole or in part and is not obligated to parse the application or rule on each item. *Mares, supra,* 801 F.2d 1197; *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc.,* 924 F.2d 955 (9th Cir. 1991). "[T]he court's most careful labor must be concentrated on adjustments to claimed hours." *Mares, supra,* 801 F.2d at 1201, and its findings should be adequate to support its ruling. *Hensley v. Eckerhart,* 461 U.S. 424 (1983). The conduct of the committee and counsel are examined under the above standards.

Attorney Fees

The owners' HUD claims for unfinished infrastructure work were the plainest sort of contract claims against the debtor AFC and were resolved in the consensual plan. The property owners were clearly acting as creditors in asserting these damages claims for breach of contractual promises by the developer/debtor. The objectors, on the other hand, elicited testimony to the effect that the POC was not

concerned with the HUD claims and that BG's efforts in resolving these claims ultimately worked to the detriment of the property owners and to the financial advantage of the plan funder. No testimony to that effect, however, was elicited from the POC, and given the committee's active participation throughout the case, the Court does not find that BG acted adversely to its client's interests. Because no showing was made that the resolution of HUD claims was detrimental to the estate, and because a mutually agreeable resolution of these claims likely precludes future litigation, the Court concludes that a reasonable fee for these services is compensable from the estate.

The efforts of BG and the POC in encouraging the property owners to continue to pay their dues, in negotiating a modified dues structure, and in locating and preserving an account of escrowed funds clearly benefitted the AFC estate. Early on in the case, the debtor-in-possession had filed a motion to assume, for one year, the amenities-use agreements as executory contracts, and later the POC believed that the agreements would be breached by the Trustee's proposed plan of reorganization. It does not appear that there had been any breach of the agreements, either pre-petition or post-petition, which could have given rise to claims by property owners.[1] Such a breach or rejection of the agreements would have created a class of unsecured creditors. Counsel for the POC prevailed upon the debtor-in-possession to withdraw the

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[1] These potential claims and the HUD claims were the only claims, other than the "negative easement" claim, known to the owners at the beginning of the case. As noted above, the Court has been given no credible evidence that the U.S. Trustee and owners discussed any limitations on the committee's activities.

motion to assume, and materially assisted in the reorganization by renegotiating the dues structure. These efforts effectively precluded litigation over use of amenities or unreasonable dues; fees for services related to the dues structure, and for preservation of the escrow account, are properly an obligation of the AFC estate.

These cases were jointly administered until plan confirmation, at which time the estates were consolidated. The POC and BG participated actively in all phases of developing a plan of reorganization. And although some of this activity actually assisted in the final version of the negotiated plan, in large part the POC was not acting as creditors and significantly hindered and delayed resolution of the case. The clearest example was their effort to file a plan in the hotel case ("Sangre IV"). The POC and its proposed plan funder insisted that any plan for reorganizing the resort must include the hotel, and counsel vigorously pursued an attempt to gain standing in Sangre IV. To achieve this end, BG incurred $23,765.50 in fees purchasing a $50 room reservation deposit claim and attempting thereby to participate in the Sangre IV plan. This attempt to become a plan proponent in the Sangre IV case was a sham and a manipulation of the legal system, and was denied by the Court.

BG also attempted to obtain standing in Sangre IV and the other cases, by moving for substantive consolidation of the five bankruptcy cases, at a cost of $22,996.50. Joint administration of the cases had been ordered on October 27, 1993, long before BG's first fee application. Substantive consolidation of those cases was not appropriate, as evidenced by the variety of secured claims and types of estates, and even

by the nature of POC's consolidation motions ("Conditional Motion for Substantive Consolidation" and "Amended Motion for 'Hybrid' Substantive Consolidation"). Fees generated in this effort are not the obligation of the estate.

The POC also proposed plans which were to be funded by recovery on lender liability claims and called for a cram down of Parker Town Square's secured claim. This proposed treatment of Parker was very likely unconfirmable on its face, and such futile efforts are the exact object of the ruling in *Lederman, supra,* which denied fees for efforts that counsel should have known could not succeed. 997 F.2d at 1324. BG's services in pursuit of these plans are not compensable.

The committee directed much of its efforts at monitoring and controlling the use of dues paid by owners to AFC. On its face, this was an appropriate undertaking because the owners were entitled to an accounting for dues paid, and because dues partly supported operation and maintenance of the amenities. Of the approximately $10 million annual income of the resort, however, dues only amounted to approximately $1.5 million, and a motion to sequester dues was granted. The committee, undaunted, initiated litigation over intercorporate transfers of funds unrelated to owners' dues, asserting at hearing that this litigation was justified under 11 U.S.C. § 1103(c)(2). The committee's accountant testified that one-half to three-quarters of the committee's time was spent on this issue. Here again, as with their attempts to intervene and to file plans without standing to do so, the committee and counsel greatly exceeded their role as creditors. *See Cumberland Farms, supra,* 154 B.R. at 12 (investigation under § 1103 is not "free license to involve itself in every minute aspect of the debtor's

business"). Furthermore, the genuineness of the owners' concern over these transfers was put in serious doubt by BG's insistence, when AFC could not make an interim payment, that its fees be paid from funds of affiliated debtors.

The POC's litigation activities were particularly inappropriate. BG incurred fees in the amount of $120,146.00 prosecuting a declaratory judgment action over the so-called negative easement. No prior court approval was sought. *See In re Gulf USA Corp.*, 171 B.R. 379 (Bankr. Idaho 1994) (no compensation from estate if litigation not approved). The POC was concerned that the easement would not survive the bankruptcy and that the right to use the amenities was jeopardized by possible restructuring or loss of the dues covenant. The objective of the litigation was to obtain a declaration that the property owners held a negative easement in the amenities, prohibiting any other use of the amenities by management and guaranteeing the owners' right to use the amenities. The owners' underlying theory was well supported by New Mexico case law. A negative easement limits the use of a piece of land dedicated to a specific purpose such as a golf course, and prevents its use for any other purpose such as residential lots. *Cree Meadows, Inc. v. Palmer,* 68 N.M. 479, 362 P.2d 1007(1961). The owners' legal position was so strong that this Court concluded, as had the state court previously, that their pleadings did not present a case or controversy.

Furthermore, even if the committee's allegations had stated a claim for relief, the litigation was not related to the bankruptcy, and counsel's fees therefor were not allowable. The negative easement covenants established certain exclusive uses of the property, and other uses would have been

prohibited in equity. *Cree Meadows, supra,* 68 N.M. at 484-85, 362 P.2d at 1010-11. The breach, which the owners apparently foresaw at every turn but never appeared, would not have given rise to a claim cognizable under the bankruptcy code. "[R]ights to an equitable remedy for breach of performance with respect to which such breach does not give rise to a right to payment are not 'claims' within the Code's contemplation . . . unless such obligations could be translated into a claim for damages if breached." Collier on Bankruptcy, § 1 01.04 at 101-15 (15th ed. 1982), *quoted in In re Altair Airlines, Inc.,* 25 B.R. 223, 225 n.4 (Bankr. E.D. Pa. 1982). Because the litigation did not arise out of claims against the estate, counsel's fees for the litigation are not compensable.

The other problem with the easement litigation, in simple terms, was that the owners either had the easement or they did not. If the owners had no such easement, there could be no breach, obviously, and not even an equitable claim would have arisen. Conversely, if the owners were concerned, as was asserted at this hearing, that they held only contractual rights in the amenities, their litigation to transform such rights into a "property rights" – to gain more than they originally bargained for – bore no relation to the bankruptcy. And last, nobody was threatening to deprive the owners of whatever rights they had. This litigation was not necessary to protect rights of creditors and was certainly of no benefit to the estate.

The POC and counsel also attempted twice to intervene in the "Barclay" litigation, an action to determine the validity, priority, and extent of liens on the ski property (AFSC). The reason, again, for attempting to intervene was

to protect the property owners' rights in this amenity. Testimony on this issue indicated that BG attorneys were fully cognizant that restrictive covenants would not be extinguished by a foreclosure action, and that other creditors had no intent to extinguish the property owners' amenities rights. The first motion was resolved by a stipulated order denying intervention, and the Court denied a second post-judgment motion filed when an appeal was taken from the judgment. These motions were not the undertaken as allowable creditor activities. Significant amounts of fees charged by BG for litigation are not compensable from the estate.

Paralegal Fees and Expenses

With respect to paralegal services performed by BG, the parties do not dispute the reasonableness of the hourly rates charged. The disagreement is whether certain of these services, as well as copy charges, were "actual" under the statute.

Paralegal duties are not always clearly distinguishable from clerical duties. Objections to BG's first fee application put the distinction at issue, resulting in a partial reduction in the first interim award. The distinction is of no concern to the Court at this time, in light of BG's response to concerns expressed by Judge McFeeley regarding paralegal charges at the hearing on the first application. (Order of October 17, 1994.) Two days after that hearing, BG issued an office memo directing staff to change their descriptions of various clerical tasks in order to justify billing these tasks as paralegal work. Clerical services do not become compensable by being charged at paralegal rates. *In re Orthopaedic Technology, supra,* 97 B.R. at 601; *In re Almacs, Inc.*, 178 B.R. 598. As

a result, all fees for paralegal services charged subsequent to the memo are, at best, questionable as "actual" services under the statute. At worst, these charges do not survive the threshold inquiry of honesty required of officers of the Court and by Fed. R. Bankr. P. 9011. Furthermore, BG's own expert witness questioned the reasonableness of these charges. (Tr. 199.) Fees for paralegal services will be reduced accordingly.

Finally, BG sought reimbursement of $43,635.20 for copying costs from September 1993 through May 1995. Ms. Behles testified that after the first fee application, the firm received bids for bulk copying at approximately ten cents per copy, and thereafter the firm charged ten cents for bulk copying and twenty-five cents for smaller jobs. Documentary evidence, however, established that BG charged twenty-five cents per copy for the vast majority of their copies. Ms. Behles testified that these costs were reasonable, but reasonableness is not the standard for expenses. Only actual expenses are compensable. 11 U.S.C. § 330(a)(1)(A) & (B). The evidence does not support the asserted unit-cost of twenty-five cents per copy, and these expenses will be reduced accordingly.

In light of the foregoing findings and conclusions, compensable fees of BG shall be limited to services provided on the HUD claims, the escrow funds, the dues structure, and a limited amount of assistance in estate administration and plan participation. Significant amounts of paralegal fees and copy costs must be denied. At the conclusion of trial on these applications, the objectors effectively withdrew portions of their objections and proposed allowing fees in the amount of $535,507.05. And although the evidence may have supported

denial of a much greater portion of the applications, the Court is certain that, even after a three-day trial, the parties are more familiar with this case than is the Court. *See In re Puget Sound Plywood, supra,* 924 F.2d at 961 (alternative formula for reduction not abuse of discretion); *In re Kitchen Factors, supra*, 143 B.R. at 563 (affirming 50% reduction where counsel did not scale services to possible recovery). The Second, Third, and Fourth Applications for Compensation (Doc. # 637, 981, and 1311) of BG, therefore, shall be denied in part and allowed in the amount of $535,507.05. It is, therefore,

ORDERED that the Second, Third, and Fourth Applications for Compensation (Doc. # 637, 981, and 1311) by Behles-Giddens, P.A., are finally approved, and the Applications are allowed in the amount of $535,507.05. It is

FURTHER ORDERED that any sums received by Behles-Giddens, P.A., from the estate in excess of the total amount allowed by this Order and upon the First Application shall be returned to the estate forthwith. It is

FURTHER ORDERED that no further applications for compensation from Behles-Giddens, P.A., as counsel for the Property Owners Committee, herein shall be considered by the Court.

Dated: August 11, 1997

BY THE COURT

/s/_____
Roland J. Brumbaugh
United States Bankruptcy Judge

APPENDIX E

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed September 18, 1995]

No. 11-93-12176 RA

In re:	)	
	)	
ANGEL FIRE CORPORATION,	)	
ANGEL FIRE SKI	)	JOINTLY
CORPORATION, SANGRE	)	ADMINISTERED
DE CRISTO LIMITED	)	
PARTNERSHIP I, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP II, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP IV,	)	
Debtors,	)	
	)	

ORDER REGARDING SECOND, THIRD, AND FOURTH APPLICATIONS FOR COMPENSATION FILED BY COUNSEL FOR THE PROPERTY OWNERS COMMITTEE

THIS MATTER came before the Court upon the second, third, and provisional final applications for compensation filed by the law firm of Behles-Giddens, P.A.,

counsel for the Property Owners Committee. The Court, after hearing the evidence and arguments of the parties made findings and conclusions that the applications should be allowed in the sum of $535,507.05.

IT IS, THEREFORE, ORDERED that the applications for compensation by Behles-Giddens, P.A. are finally approved, and that with respect to the second, third and provisional final applications for compensation, they are allowed in the sum of $535,507.05.

IT IS FURTHER ORDERED that no further fee applications be considered for counsel for the Property Owners Committee.

/s/_____
STEWART ROSE
U.S. BANKRUPTCY JUDGE

Submitted by:

BEHLES-GIDDENS, P.A.
Attorneys for Angel Fire
Property Owners Committee

By /s/_____
George D. Giddens, Jr.
P.O. Box 849
Albuquerque, NM 87103-0849
(505) 243-9756
(505) 243-7262 (Fax)

APPENDIX F

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW MEXICO

[Filed January 3, 1995]

No. 11-93-12176 MA

In re:	)	
	)	
ANGEL FIRE CORPORATION,	)	
ANGEL FIRE SKI	)	JOINTLY
CORPORATION, SANGRE	)	ADMINISTERED
DE CRISTO LIMITED	)	
PARTNERSHIP I, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP II, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP IV,	)	
Debtors,	)	
	)	

ORDER DENYING FIRST NATIONAL BANK OF SANTA FE'S MOTION TO AMEND ORDER AUTHORIZING EMPLOYMENT OF COUNSEL FOR THE PROPERTY OWNERS' COMMITTEE, AND FOR ORDER DIRECTING THE ATTORNEYS FOR THE POC TO DISGORGE ALL FEES AND COSTS HERETOFORE RECEIVED

THIS MATTER came before the Court upon the Motion by First National Bank of Santa Fe and Ticor Title Insurance ("FNB") to Amend order Authorizing Employment of Counsel for the Property Owners Committee ("POC") and for Order Directing the Attorneys for the POC to Disgorge all Fees and Costs Heretofore Received. Dave Giddens appeared on behalf of Behles-Giddens, P.A. ("Behles-Giddens"). FNB appeared through its counsel, Moses, Dunn, Farmer & Tuthill, P.C. (Victor Carlin). Daniel J. Behles appeared as counsel for the Debtor. After hearing testimony of witnesses, argument of counsel and Behles-Giddens' motion to dismiss FNB's Motion for lack of evidence to support it, made at the end of FNB's case, the Court finds that there has not been sufficient grounds set forth to grant FNB's Motion. Pursuant to 11 U.S.C. § 328, it would not be appropriate to disapprove all of POC's Counsels' fees and order disgorgement based on a motion of this kind, even if it were true that there were significant changes of circumstances in this case. Such denial and disgorgement of fees would only be reasonable upon the denial of a fee application based on an underlying violation of the Bankruptcy Code.

IT IS THEREFORE ORDERED:

1. FNB's Motion to Amend Order Authorizing Employment of Counsel for the Property Owners Committee ("POC") and for Order Directing the Attorneys for the POC to Disgorge all Fees and Costs Heretofore Received is hereby denied.

2. The Court's denial of FNB's Motion is not to be construed as approval of any fees to counsel for the POC

other than what has already been approved on an interim basis.

3. Future payment of fees to counsel for the POC may only be paid from the Debtor Angel Fire Corporation case, No. 11-93-12176MA, the case in which the POC was appointed. The Trustee is prohibited from borrowing funds from any of the other Debtors in order to pay counsel's fees.

4. Except for Debtor's counsel, from whom the Trustee has determined to withhold payment of fees for reasons unrelated to this matter, the Court hereby amends the September 30, 1993 Order on Motion to Employ Counsel authorizing monthly payments to counsel for the POC to allow payment only to the extent the Trustee is able to pay all other Court-approved professionals in the Angel Fire Corporation case. All Court-approved professionals, other than Debtor's counsel, must be paid monthly on an equal percentage basis, or not at all.

5. The Trustee shall ensure that all monies belonging to each of the five debtors herein shall be separately accounted for and sequestered in order to avoid commingling of funds.

/s/_____
United States Bankruptcy Judge

Submitted by:

Behles-Giddens, P.A.
Attorneys for the POC

By /s/_____
George David Giddens, Jr.
P.O. Box 849
Albuquerque, NM 87103
(505) 243-9756

Approved as to form:

Moses, Dunn, Farmer & Tuthill, P.C.
Attorneys for FNB/Ticor Title

By Telephonic approval 12/21/94.
Victor E. Carlin
P.O. Box 27047
Albuquerque, NM 87125-7047
(505) 843-9440

Bill J. Sholer, P.C.
Trustee

By Telephonic approval 12/22/94
Bill J. Sholer
5353 Wyoming, NE, #1
Albuquerque, NM 87109
(505) 821-3343

I CERTIFY that copies were mailed to listed counsel on the date file-stamped above.

/s/_____
Deputy Clerk

Behles & Associates
Counsel for the Debtors

By Telephonic approval 12/23/94
Daniel J. Behles
P.O. Box 415
Albuquerque, NH 87103
(505) 242-353S

APPENDIX G

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed November 21, 1994]

No. 11-93-12176 MA

In re:	)
	)
ANGEL FIRE CORPORATION,	)
Debtors,	)
	)

ORDER APPROVING SECOND INTERIM APPLICATION FOR REIMBURSEMENT OF ACTUAL, NECESSARY EXPENSES INCURRED BY PROPERTY OWNERS' COMMITTEE MEMBERS

THIS MATTER came before the Court upon the Second Interim Application for Reimbursement of Actual, Necessary Expenses Incurred by the Members of the Angel Fire Property Owners, Committee, filed herein on October 18, 1994. The Court being fully advised in the premises finds that proper notice was given and that no objections were received, that the expenses sought are reasonable, necessary and a benefit to the estate;

IT IS THEREFORE ORDERED that payments be made by the Debtor to the following committee members as reimbursement for their actual, necessary expenses:

H. Wayne Jones	$ 899.57
Herbert Kalen	$ 930.00
Zene Hemphill	$1,891.66
Ruth Bush	$ 705.00
Alfred J. Smith	$ 203.02
Russell Sylvester	$ 160.86

The total reimbursement to committee members is $4,790.11 for the actual and necessary expenses requested by those committee members from March 1, 1994, through August 31, 1994.

/s/_____
MARK B. McFEELEY
U. S. Bankruptcy Judge

Submitted by:

BEHLES-GIDDENS, P.A.
Attorneys for POC

By /s/_____
Jennie Deden Behles
Karen W. Howden
P.O. Box 849
Albuquerque, NM 87103-0849
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(505) 243-7262 (Fax)

APPENDIX H

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed October 27, 1994]

No. 11-93-12176 MA

In re:	)
	)
ANGEL FIRE CORPORATION,	)
Debtors,	)
	)

ORDER PARTIALLY APPROVING AND PARTIALLY DISAPPROVING PAYMENT OF PROPERTY OWNERS' COMMITTEE'S FIRST INTERIM APPLICATION FOR COMPENSATION OF COUNSEL

THIS MATTER came before the Court for a final hearing on the first application for compensation for the counsel for the Property Owners' Committee, and upon the objection filed thereto by the First National Bank of Santa Fe. Applicant was represented by George D. Giddens, Jr., and the First National Bank in Santa Fe was represented by Moses, Dunn, Farmer & Tuthill, P.C. (Thomas Dunn). The Court, having heard the testimony, reviewed the evidence and the arguments of the parties, and being fully advised in the premises, FINDS:

1. This matter was the subject of two prior orders, entered June 20, 1994, and September 22, 1994. The previous two orders had approved all of the compensation requested in the first interim application for compensation except the sum of $11,909.50, plus applicable gross receipts tax.

2. After the continuation of the final hearing on September 12, 1994, the Court took under advisement the question of whether the $11,909.50 should be allowed.

3. The Court finds that a total of 52.15 hours of requested paralegal time represents services that should have been classified as secretarial or clerical services and was not appropriately chargeable to this estate.

4. At the applicable hourly rate of $50.00 per hour, the 52.15 disallowed hours represents $2,607.50 plus gross receipts tax in the amount of $151.56, making the total amount disallowed $2,759.06.

5. After deducting the $2,607.50 from the requested amount of $11,909.50, applicant should be awarded the remaining balance of the first interim application in the amount of $9,302.00 plus applicable gross receipts tax equalling $540.68, making the total amount awarded $9,842.68.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that an interim allowance of compensation to the applicant in the amount of $9,842.68, representing $9,302.00 of professional services and $540.68 of gross receipts tax be,

and the same hereby is, approved as an expense of administration pursuant to 11 U.S.C. §503.

IT IS FURTHER ORDERED that the application is disallowed to the extent of $2,607.50 plus $151.56 gross receipts tax, totalling $2,759.06.

/s/_____
MARK McFEELEY
U.S. Bankruptcy Judge

Approved:

BEHLES-GIDDENS, P.A.
Attorneys for the Applicant

By /s/_____
George D. Giddens, Jr.
P.O. Box 849
Albuquerque, NM 87103-0849
(505) 243-9756
(505) 243-7262 (Fax)

MOSES, DUNN, FARMER & TUTHILL
Attorneys for First National
Bank in Santa Fe

By /s/_____
Thomas J. Dunn
P.O. Box 27047
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(505) 843-9440
(505) 247-3213

APPENDIX I

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed September 22, 1994]

No. 11-93-12176 MA

In re:	)	
	)	
ANGEL FIRE CORPORATION,	)	
ANGEL FIRE SKI	)	JOINTLY
CORPORATION, SANGRE	)	ADMINISTERED
DE CRISTO LIMITED	)	
PARTNERSHIP I, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP II, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHP IV,	)	
Debtors,	)	
	)	

ORDER APPROVING SECOND INTERIM ALLOWANCE OF COMPENSATION ON COUNSEL FOR THE PROPERTY OWNERS' COMMITTEE'S FIRST APPLICATION FOR COMPENSATION

THIS MATTER came before the Court for a continuation of the final hearing on the First Application for Compensation of the Counsel for the Property Owners'

Committee, and upon the objection filed thereto by the First National Bank of Santa Fe. Applicant was represented by George D. Giddens, Jr., and the First National Bank in Santa Fe was represented by Thomas Dunn. The Court, having heard the testimony and arguments of the parties, and being fully advised in the premises, FINDS:

1. That after the Court's order of June 20, 1994, of the total amount requested to be approved, the sum of $48,807.10 plus $603.10 for preparation of the application, remained unapproved.

2. The Court further finds that applicant has agreed to reduce the application by the sum of $3,150.40, plus the sum of $1,040.00, representing time that applicant believes to be clerical time inadvertently contained in the application. After the foregoing deductions, there remains unapproved from the First Application for Compensation the sum of $44,616.70.

3. With the exception of all sums itemized in applicant's Exhibit No. 11 ($11,909.50), and the services specified in Item No. 4 in applicant's Exhibit No. 13 ($143.00) , applicant demonstrated that the remainder of the services requested in the application were actually necessary for representation of the Property Owners' Committee, and that the sums requested are reasonable. Applicant is, therefore, entitled to a second interim allowance of compensation in the total sum of $32,564.20, plus applicable tax.

4. The Court will take under advisement the question of whether or not the sums specified in applicant's

Exhibit No. 11, totalling $11,909.50 represent actual and necessary services for which compensation should be allowed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

1. A second interim allowance of compensation to the applicant in the amount of $32,564.20, plus applicable gross receipts tax be, and the same hereby is approved as an expense of administration pursuant to § 11 U.S.C. 503.

2. The Court will take under advisement the question of whether the remaining $11,909.50, or any portion thereof, should be approved as compensation to the applicant.

3. Applicant is awarded a further $603.10 for preparation of the first application for compensation.

4. The total amount of the second interim allowance of compensation approved pursuant to this order equals $33,149.30.

/s/_____
MARK B. MCFEELEY
United States Bankruptcy Judge

Approved by:

BEHLES-GIDDENS, P.A.
Attorneys for POC

By /s/_____
George D. Giddens, Jr.
P.O. Box 849
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MOSES, DUNN, FARMER &
TUTHILL, P.C.
Attorneys for First National
Bank in Santa Fe

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(505) 247-3213 (Fax)

I CERTIFY that copies were mailed to listed counsel on the date file-stamped above.

/s/_____
Deputy Clerk

APPENDIX J

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed June 20, 1994]

No. 11-93-12176 MA

In re:	)	
	)	
ANGEL FIRE CORPORATION,	)	
ANGEL FIRE SKI	)	JOINTLY
CORPORATION, SANGRE	)	ADMINISTERED
DE CRISTO LIMITED	)	
PARTNERSHIP I, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP II, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP IV,	)	
Debtors,	)	
	)	

ORDER APPROVING PARTIAL PAYMENT OF PROPERTY OWNERS' COMMITTEE'S FIRST INTERIM APPLICATION FOR COMPENSATION

THIS MATTER having come before the court upon the final hearing held on First National Bank of Santa Fe's objection to the First Application for Compensation of counsel

for the Property Owners' Committee (the "Application"), and the Court having heard testimony and having decided to continue this matter until September 12, 1994, at 9:00 a.m., makes the following findings:

1. That counsel for the Property Owners' Committee, Behles-Giddens, P.A., has agreed in settlement of all objections to the Application, except the objection of First National Bank of Santa Fe, to reduce its total fee application by $3,150.40.

2. The Court further finds that the total fees, costs and tax requested by counsel for the Property Owners' Committee equals $181,782.78, of which the total outstanding unpaid balance to counsel for the Property Owners' Committee is $96,807.10, plus $603.10 for preparation of the Application.

3. The Court finds that the total amount objected to by First National Bank of Santa Fe is $27,889.40. After deduction of that amount plus the $3,150.40 which Behles-Giddens, P.A. has agreed to withdraw from the Application, approval of an interim allowance to Behles-Giddens, P.A. in the amount of $48,000.00 is reasonable

4. After the foregoing interim allowance, there will be owing to Behles-Giddens, P.A. pursuant to the Application the sum of $48,807.10, plus $603.10 for preparation of the Application. Said amounts shall remain outstanding until the Court concludes the hearing on the Application.

5. The Court further finds that, there being no remaining objections to the Application, except that First National Bank of Santa Fe, as set forth in Paragraph 3 above, the remainder of the compensation requested in the Application, except the sums specified in Paragraph 4 above, represents actual and necessary, services and is reasonable, and should be approved on a interim basis.

IT IS THEREFORE ORDERED:

1. That the total outstanding unpaid balance of fees owed to the firm of Behles-Giddens, P.A., under the Application, equals $96,807.10 ($99,957.50 - $3,150.40).

2. That the sum of $603.10 is also outstanding to Behles-Giddens, P.A., for the preparation of the Application.

3. That Behles-Giddens has agreed to voluntarily reduce the Application by $3,150.40.

4. That Behles-Giddens, P.A., shall receive the sum of $48,000.00 of its outstanding unpaid balance upon the entry of this Court order as an interim award of compensation.

5. That the remaining balance of Fees owed to Behles-Giddens, P.A., in the amount of $48,801.10 and $603.10, shall remain unpaid pending the final hearing on the Application, which shall be held on September 12, 1994, at 9:00 a.m.

6. That with the exception of the sums provided in Paragraph 5, the remainder of the sums requested in the

Application, be and hereby are, approved on an interim basis.

BY THE COURT

/s/_____
United States Bankruptcy Judge

Submitted By:

BEHLES-GIDDENS, P.A.
Attorneys for Property Owners Committee

By /s/_____
George Behles-Giddens, Jr.
P. Diane Webb
P.O. Box 849
Albuquerque, NM 87103-0849
(505) 243-9756
(505) 243-7262 (Fax)

Approved as to Form and Content:

MOSES, DUNN, FARMER
& TUTHILL, P.C.
Attorneys for First National
Bank of Santa Fe

By Telephone Approval 6/14/94
Alicia L. Gutierrez
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Albuquerque, NM 87125-7047

(505) 843-9440
(505 247-3213 (Fax)

I CERTIFY that copies were mailed to listed counsel on the date file-stamped above.

/s/_____
Deputy Clerk

APPENDIX K

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed June 13, 1994]

No. 11-93-12176 MA

In re:	)	
	)	
ANGEL FIRE CORPORATION,	)	
ANGEL FIRE SKI	)	JOINTLY
CORPORATION, SANGRE	)	ADMINISTERED
DE CRISTO LIMITED	)	
PARTNERSHIP I, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP II, SANGRE	)	
DE CRISTO LIMITED	)	
PARTNERSHIP IV,	)	
Debtors,	)	
	)	

STIPULATED ORDER COMPROMISING DEBTOR'S OBJECTION TO POC COUNSEL'S FIRST APPLICATION FOR COMPENSATION

THIS MATTER came before the Court upon the stipulation between Behles-Giddens, P.A. ("Applicant") and the Debtor to Applicant's first application for compensation.

Debtor previously having partially withdrawn its objection to the Application, the parties have agreed to compromise and finally settle Debtor's remaining objection by Applicant reducing the request for compensation by $3,150.40. By his signature hereto, the United States Trustee agrees to the parties' stipulation. The Court finds that the stipulation is reasonable and should be approved.

IT IS THEREFORE ORDERED that the stipulation of the parties for Applicant to reduce its first request for compensation by $3,150.40 is hereby approved as a complete settlement of both the Debtor's and the United State's Trustee's objection to the first fee application of counsel for the Property Owners' Committee.

/s/_____
The Honorable Mark B. McFeeley
Bankruptcy Court Judge

Submitted By:
BEHLES-GIDDENS, P.A.
Attorneys for POC

By /s/_____
Jennie Deden Behles
Geraldine E. Rivera
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BEHLES &ASSOCIATES
Attorneys for Debtor

By Telephonic Approval 6/7/94
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(505) 242-3535
(505) 242-2836 (Fax)

OFFICE OF THE UNITED STATES TRUSTEE

By Telephonic Approval 6/7/94
Leonard Martinez-Metzgar
P.O. Box 608
Albuquerque, NM 87103
(505) 766-3103

I CERTIFY that copies were mailed to listed counsel on the date file-stamped above.

/s/_____
Deputy Clerk

APPENDIX L

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

[Filed March 1, 2000]

No. No. 98-2198

BEHLES-GIDDENS, P.A., now known as J.D. BEHLES AND ASSOCIATES, P.C., *Appellant,*	)
v.	)
ANGEL PROJECT I, LTD., and UNITED STATES TRUSTEE, *Appellees.*	)

ORDER

Before **BRORBY** and **McWILLIAMS**, Circuit Judges, and **WEST**,* District Judge.

Appellant's petition for rehearing is denied.

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* The Honorable Lee R. West, Senior United States District Judge for the Western District of Oklahoma, sitting by designation.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service as required by Fed. R. App. P. 35. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
PATRICK FISHER, Clerk of Court

by: /s/_____
Deputy Clerk